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Before the
Federal Communications Commission
Washington, DC. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of the	)	
Cable Television Consumer	)	MM Docket No. 92-259
Protection and Competition	)	
Act of 1992	)	

Broadcast Signal Carriage Issues

To: The Commission

Petition For Reconsideration

The Community Antenna Television Association, Inc. ("CATA") is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 60 million cable television subscribers. CATA fully participated in this proceeding, filing "Comments" and "Reply Comments," and files this "Petition for Reconsideration" on behalf of its members who are directly affected by the Commission's action.

CATA continues to believe that the "must carry" rules implemented by the Commission are unconstitutional. This is presently being tested in the courts, and it would appear that a final decision will not be rendered prior to the rules going into effect. Thus, this petition for reconsideration is focused solely on the operational aspects of the rules which we believe should be either clarified or changed to assure that there is a minimum of unintended or unneeded confusion or disruption for consumers nationwide.

1. Small system exemption

Section 76.56(b)(1) states that,

> *"A cable system with 12 or fewer usable activated channels, as defined in Section 76.5(oo), shall carry the signals of at least three local commercial television stations, except that if such system had 300 or fewer subscribers on October 5, 1992, it shall not be subject to these requirements as long as it does not delete from carriage any broadcast television station."*

This language tracks Section 614(b)(1)(A) of the Cable Act except that the Act does not specify a date. In the text of the Report and Order (para. 27) the Commission notes that because of NAB's concern that a system might drop a signal that it has historically carried (emphasis supplied), a date -October 5, 1992, was chosen as determining whether a system is exempt from the must-carry provisions. "Thus, a system with 12 or fewer channels and 300 or fewer subscribers need only carry those broadcast stations it carried on that date." The rule, as written, appears to be at odds with the Commission's own explanatory text and the provisions of the Act.

CATA believes the reasoning of the text is correct and clear. A date was chosen to prevent historically carried signals from being dropped - not to determine at what point a system had 300 or fewer subscribers, as is inadvertently the case in the sentence structuring of the rule. Further it is only the signals carried before October 5, 1992, that cannot be dropped. Any added after that date presumably can be dropped.

CATA urges the Commission to conform Section 76.56(b)(1) to the text of its Report and Order. We believe this to be a technical correction of inadvertent drafting of the final rule.

2. June 2, 1993 requirement that systems begin carriage of must-carry, local commercial stations.

By requiring systems to begin carriage of "must-carry" stations on June 2, 1993, while scheduling the election between must-carry and retransmission consent status and channel positioning on June 17, 1993, and finally, making retransmission consent and channel positioning effective on October 6, 1993, the Commission has created a consumer's nightmare. There is simply no rationale that can justify the confusion this timetable will necessarily create for cable consumers. The Commission explains that Congressional intent precludes delaying implementation of the must-carry rules until October 6, 1993. While we do not agree, absolutely no explanation is given for why systems cannot wait a mere 15 days, until June 17, 1993, when they find out whether broadcasters even want must-carry status on their systems, before requiring commencement of such carriage. For the sake of the sanity of our subscribers, this should be changed.

The Commission believes Congress intended for must-carry rights to vest promptly. Congress may well have intended for must-carry rights to vest as promptly as possible. But surely Congress did not intend that the effectuation of the Cable Act result in multiple dislocations for subscribers all during the Summer of 1993. Surely it is possible to interpret the statute in a manner that preserves to the Congress some semblance of common sense while at the same time effectuating its will. Schedules can be drawn, notifications can be served

and preparations can be made, but implementation - carriage itself - can be delayed pending all the initiating mechanics necessary to put the whole program into operation. It makes little sense to begin carrying a station on one channel, only to have to move it to another channel a few months later. It makes absolutely no sense to begin carriage of a station (with the attendant required notices to subscribers and franchising authorities) only to find out 15 days later that the station is not requesting carriage, but rather has determined to withhold its consent to be carried at all! Yet that is the practical result of the Commission's current schedule.

The advent of signal carriage obligations may require that other stations or programming services be dropped. This is a significant matter. Subscribers cannot be given a yo-yo treatment where some signals are dropped, others added, and then removed again, all against a background of shifting channel numbers. And all in the context of franchising authorities beginning their attempts to at least count the number of stations on a system's basic tier in preparation for rate regulation. Congress could not have intended for the Commission to create chaos, however unartful its legislation may have been. If the Cable Act was fueled by subscriber complaints, one can only imagine the dissatisfaction that will be caused by subjecting subscribers to the Commission's "now you see it, now you don't" schedule for the implementation of new channel lineups! CATA believes that the Commission can satisfy the Act without subjecting cable systems and their subscribers to a schedule that is, at best, ill considered. It would be more sensible for the obligation to begin carrying a station to vest after the election between must-carry and retransmission consent and after the matter of channel positioning has been settled. At the very least, the Commission should do away with its artificial obligation to carry signals on June 2, before broadcasters have spoken on June 17.

This approach, ironically, is internally consistent with the Commission's own stated concerns about the "...unnecessary and potentially harmful disruption of a recently added signal quickly losing carriage" upon consumers. This is precisely the rationale the Commission uses in paragraph 46 of the Report and Order to deny a request that stations be required to be added to a system during the pendency of a challenge to an ADI market designation. In paragraph 154, in the process of announcing the schedule, the Commission again says "...we believe the public interest would be served by reducing the extent to which adjustments of channel line-ups is necessary during the transition period." Yet, one paragraph before, the Report and Order cites its only rationale for selecting the June 2 date which will potentially cause those very disruptions. "NAB indicates that full compliance should come within 60 days of the adoption of the new rules..."

We urge the Commission to consider the public interest a higher priority than the NAB's dictates.

3. Channel Positioning

Under the Commission's rules, local commercial stations and NCE stations have various choices of what channel to be carried on. Section 76.57(a) permits local commercial stations to choose their over-the-air channel number, the channel on which they were carried on July 19, 1985, or the channel on which they were carried on January 1, 1992. Pursuant to Section 76.57(b), NCE stations may choose their over-the-air channel number or the channel on which they were carried on July 19, 1985. Given the number of choices, it is inevitable that there will be conflicting claims for the same channel number.

In its Report and Order the Commission "declined" to adopt a priority scheme. Rather it suggested that operators and station licensees give "serious consideration to the value of maintaining current channel positions because this approach will be least disruptive, especially for subscribers." CATA believes this suggestion will accomplish little. Many broadcasters want premier channel numbers. That is why they lobbied for the Act to give them a choice. We do not seriously anticipate that the broadcasters will forego that choice in order to be least disruptive to subscribers. Moreover, the Act and the new rules now require carriage of stations that may not have been carried before. For them there is no present channel position to maintain, and indeed their only choice under the rules can be their over-the-air channel number. CATA suggests that where there are conflicts in requests for channel positioning the cable operator be given the right to choose a channel position that best conforms to any channeling scheme or tiering arrangement which has been implemented. That will best serve cable subscribers, who, after all, are supposed to be the primary beneficiaries of the Act.

Section 76.57(d) states that broadcasters will have the opportunity to choose their channel position on June 17, 1993, should they request must carry status. The Commission has determined that should a broadcaster fail to choose between must carry and retransmission consent it will be deemed to have selected must-carry status by default. Left open is the question of channel position in this case. CATA presumes that in any case where a broadcaster, otherwise entitled to must-carry status has not made any election, the cable operator is free to choose a channel position. It would eliminate confusion if the Commission clarifies its rules accordingly.

4. Retransmission consent for radio

CATA requests the Commission to reconsider its decision that the Cable Act intends that cable operators obtain retransmission consent for the carriage of radio signals. At the very least, CATA believes Congress did not intend retransmission consent to apply where all-band radio is being provided on cable systems. The Act and its legislative history are silent with respect to the carriage of radio signals. Rather the entire thrust of the Act is to prescribe the conditions and practices surrounding cable's provision of television pictures. The concept of local as opposed to distant signal is painstaking spelled out in the Act - with television stations in mind. There is no similar treatment of radio stations, no distinction between carriage rights and retransmission consent rights, indeed, no finding that would even hint of a concern for a radio station's rights with respect to cable carriage. Against this total lack of any evidence that the Congress intended to consider radio in the Cable Act, is musing over 60 year old legislative history by the NAB. Remarkably, the musing held sway. But the unintended anti-consumer consequences are clear. The Commission should not ignore the public's interest when it clearly has the discretion to protect it.

Despite a total lack of any record in the Act regarding retransmission consent rights for radio carriage on cable systems, assuming the Commission still believes that Congress might have intended to give retransmission consent rights to radio stations, then at least the Commission should construe Congressional intent in a manner that avoids consequences that Congress surely did not contemplate.

For while retransmission consent can work where a system carries individual stations using individual processors, it simply technically cannot work where a system simply receives all-band FM and pipes it, unaltered, to its subscribers. There is no practical method of filtering out one radio station carried as part of an all-band offering without seriously degrading, if not

eliminating the stations adjacent to it. Thus if only one station refuses retransmission consent the entire all-band offering must be removed. To imagine that Congress intended such a result does a disservice to the Congress.

One can at least believe that the Congress intended the application of retransmission consent to radio stations, where possible, but not in situations where there is no presently acceptable method for removing one signal from an all-band station line-up without affecting others and disserving subscribers. By taking an overly literal reading of language which is, at best, unclear, the Commission injures cable subscribers, cable operators and, significantly, radio stations! This could not have been the intent of the Congress. CATA suggests that the Commission reconsider the persuasiveness of the NAB argument citing 60 year old definitions, and instead consider the welfare of consumers who wish to enjoy improved reception of FM signals. In many instances, particularly in smaller systems, it is simply economically infeasible to have separately processed FM signals. All-band reception and transmission is the only service offered, and it is one that is valued by most FM stations as well. To allow one station to deprive that benefit for all the other stations and subscribers cannot be considered the intent of a self proclaimed "consumer protection" Act.

CONCLUSION

The Commission has, understandably, taken a very literal view of the Act when it comes to must carry and retransmission consent. Much of the disruption soon to be wrought on the American public is a direct result of legislative language, not Commission discretion. But in those cases where the Commission does clearly have discretion, as is the case with the citations herein, CATA respectfully requests that the Commission reconsider its initial decisions insofar

as they impose undue burdens and confusion on the viewing public for no appreciable reason.

Respectfully submitted,

The Community Antenna
Television Association, Inc.

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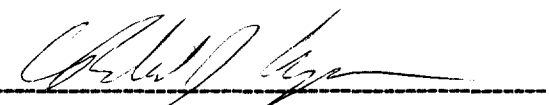

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